

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COY PHELPS,	)	
	)	
Plaintiff,	)	
V.	)	Civil Action No. 05-40003-GAO
	)	
DAVID WINN, et al.,	)	
	)	
Defendants	)	

**DEFENDANTS' MOTION TO DISMISS**

Defendants in the above-captioned action hereby move, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), to dismiss the Plaintiff's Complaint for lack of subject matter jurisdiction and failure to state a claim. In support of this motion, the Defendants submit the accompanying Memorandum of Law in Support of their Motion to Dismiss.

Respectfully submitted,  
MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Damian W. Wilmot  
DAMIAN W. WILMOT  
Assistant U.S. Attorney  
Moakley Federal Courthouse  
Boston, MA 02210  
(617) 748-3100

Dated: July 14, 2005

CERTIFICATION UNDER L.R. 7.1

Because Petitioner is a pro se prisoner currently being treated in a federal medical facility, counsel for the United States respectfully requests leave to file this Motion without a 7.1 conference. It is the undersigned's position that because the Petitioner is pro se a 7.1 conference is unnecessary, as that Rule pertains to "counsel."

/s/ Damian W. Wilmot  
DAMIAN W. WILMOT  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I certify that on July 14, 2005, I caused a copy of the foregoing Motion to be served on Petitioner by first class mail, postage pre-paid to Coy Phelps (78872-011), FMC-Devens, 42 Patton Road, P.O. Box 879, Ayer, MA 01432.

/s/ Damian W. Wilmot  
DAMIAN W. WILMOT  
Assistant U.S. Attorney